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November 5, 1992

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Federal Communications Commission
Office of the Secretary

Donna R. Searcy
Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

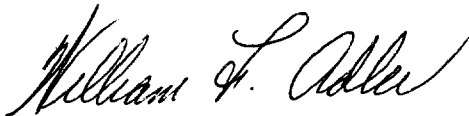
Dear Ms Searcy:

Re: CC Docket No. 92-115 - Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services

On behalf of PacTel Cellular, please find enclosed an original and six copies of its "Reply Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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NOV - 5 1992

Federal Communications Commission
Office of the Secretary

In the Matter of

Revision of Part 22 of the Commission's
Rules Governing the Public Mobile
Services

CC Docket No. 92-115

REPLY COMMENTS OF PACTEL CELLULAR

PacTel Cellular ("PacTel") has reviewed the various filings by the interested parties and hereby offers the following reply comments in the matter of the Commission's proposed rewrite of Part 22 of its rules.

I. THE COMMISSION'S PROPOSAL FOR AMNESTY FOR PUBLIC MOBILE LICENSEES SHOULD BE EXTENDED TO ALL PART 22 LICENSEES WHO VOLUNTARILY ASSIST THE COMMISSION IN UPDATING ITS DATABASE WITH ACCURATE AND CURRENT INFORMATION.

PacTel concurs with Telocator's proposal that the Commission should clarify that the amnesty program also applies to the correction of licensee records at the FCC where actual operations may be at variance from that shown on the records.¹ The Commission has proposed a grant of amnesty or waiver of forfeitures for a limited period for licensees who turn in authorizations for unused channels if they have discontinued service without notifying the Commission, or if they notified the Commission of commencement of service when such service was not commenced. PacTel believes the proposal is too narrowly focused because

¹ Telocator, p. 13.

it overlooks other less serious cases where the public interest is served by encouraging licensees to inform the Commission of discrepancies between operating conditions and the Commission's records.

A broader general amnesty period for Part 22 licensees to file Form 489s to assist the Commission in updating its records is in the public interest.

Discrepancies between the Commission's records concerning cellular or paging systems and their current operating parameters, e.g., antenna configuration, antenna height, power levels, etc., probably exist throughout the country. The Commission should take this opportunity to further encourage licensees to actively review their facilities and identify any discrepancies and file those changes with the Commission. For example, the cellular industry is beginning to review its systems where the five year fill-in period has expired or is due to expire during the next several months. When the updates are filed with the Commission, there may be discrepancies uncovered, such as a variation in the height or configuration of an antenna or the power level from what was originally reported on the initial FCC Form 489. These types of discrepancies are likely permissible changes which were simply overlooked by the licensee because the construction and engineering staff are regularly tuning the system to ensure smooth hand-off of calls and the integration of new facilities, as well as technological enhancements such as microcells.

The extension of amnesty for changes to existing facilities which do not interfere with another public mobile service ("PMS") provider's system appears to be consistent with the spirit of the Commission's amnesty proposal. In fact, there appears to be less likelihood of the public interest being harmed if a PMS provider should operate its facilities at technical levels not properly documented with the

Commission, than if a PMS licensee should hold an authorization for unused channels or misinform the Commission of commencement of service when no such service was ever commenced. In those cases, the PMS licensee has potentially denied the public service on those channels because another potential licensee who is prepared to offer service may have been denied an opportunity to be licensed by the Commission. The severity of the harm to the public can vary depending upon the market and the number of alternative service providers available. The retention of a license for unused channels can indirectly have an anticompetitive impact. The deliberate falsification of Commission records by filing an FCC Form 489 to commence service when no service will be offered is a serious matter which adversely impacts the competitive market.

In summary, the expansion of the amnesty program to include all PMS licensees (so long as another PMS licensee has not been harmed by the PMS licensee who may have been out of full compliance with the Commission's rules) appears to be beneficial to all parties. The Commission needs to have accurate records on file and PMS licensees need to be encouraged to perform a thorough review of their operations. PacTel proposes that a date certain sufficiently beyond the date on which the new rules adopted in this proceeding are published in the Federal Register be determined as the cutoff for this amnesty program. PacTel proposes that, at least 90 days from the date of the publication of the new rules in the Federal Register be considered as an appropriate and reasonable cutoff date. In addition, the Commission should issue a public notice to ensure all PMS licensees have notice of the period of the program, as well as any particular remedial procedures to be followed to ease the clerical burden on the Commission.

II. THE COMMISSION NEEDS TO CLARIFY THAT CELLULAR LICENSEES MUST FILE FCC FORM 489S FOR PERIMETER CELLS.

The Commission's proposed rules for cellular have generated much discussion and concern among cellular system operators. As CTIA notes the proposed rules are ambiguous as to whether a carrier is entitled to protection for its cell sites unless it files FCC Form 489s for each site, even though the Commission proposes to no longer require the filing of 489s for changes to interior cell sites. Several carriers,² including PacTel, believe that FCC Form 489s should be required only for cells whose contour is part of the system boundary. In other words, 489s would be filed for perimeter cells but not interior cells unless the interior cell should effect the perimeter of the system as a result of subsequent modification to a perimeter cell. Again, the majority of cellular carriers who filed comments appear to share PacTel's position that cellular carriers should be granted interference protection for all interior cell sites without the requirement of filing a Form 489. Finally, PacTel reiterates its suggestion that the Commission consider establishing a periodic interval, such as once a year, for carriers to file sytem updates which would identify all cell sites in operation and serve as documentation for a carrier's claim for interference protection.

III. THE COMMISSION NEEDS TO RECONSIDER THE EXPANSION OF THE MICROFICHE REQUIREMENT.

Several cellular carriers³ along with PacTel believe that the Commission

² Bellsouth Corporation/Bellsouth Enterprises, p. 7-8; Nynex Mobile Communications Company, p. 5-6; McCaw Cellular Communications, p. 6 & 34.

³ Southwestern Bell Corporation, p. 22; Centel Cellular Company, p. 7; GTE Service Corporation, p. 11-12; CTIA, p. 3-4.

should not expand its rule to require the microfiling of filings of under five pages. PacTel agrees with Southwestern Bell Corporation in opposing the new microfiche requirement "because it imposes unnecessary costs and restricts filing flexibility without material countervailing benefits." This issue was addressed in a previous docket which adopted the "five page rule" and there appears to be no significant support for expanding the microfiling requirement. PacTel also concurs with CTIA's recommendation that the existing flexibility to file a microfiche copy within a few days of the filing of the original paper copy be retained.

IV. THE COMMISSION SHOULD ESTABLISH A "BUFFER ZONE" TO PERMIT CARRIERS TO MAKE DE MINIMIS CHANGES FOLLOWING THE EXPIRATION OF THE FIVE YEAR EXPANSION PERIOD.

PacTel supports both CTIA's and Telocator's proposals to create a "five mile buffer zone."⁴ In effect, a carrier whose five year fill-in period has expired would be allowed to make minor adjustments to a cell site that expands or contracts coverage into the buffer zone beyond the border of the CGSA. This concept of a buffer zone recognizes the daily operational realities of cellular carriers who regularly need to adjust antennas and other equipment to maintain system quality. Such minor changes or adjustments may result in a minor change in the contour of the cell site. PacTel believes that such changes should be handled on a 489 basis if the change to the contour does not result in an expansion greater than five miles and there is no extension into an adjacent market.

⁴ CTIA, p. 5; Telocator, p. 51.

V. THE COMMISSION SHOULD RETAIN THE RULE WHICH ALLOWS CELLULAR CARRIERS TO INCREASE THE HEIGHT AND/OR POWER OF ITS FACILITIES WITH THE CONSENT OF ITS NEIGHBORING LICENSEES.

PacTel joins McCaw, CTIA, Vanguard and Telocator⁵ in urging the Commission to reconsider the elimination of the ability of cellular carriers to obtain a waiver of the height/power limitations within the Commission's rules if the consent of the neighboring cellular licensee is obtained. In order to efficiently and economically build cellular systems, carriers need to have the option of executing agreements with an adjacent cellular operator to exceed the height/power limitations. This option for obtaining a routine waiver has worked well in the past and should be retained. It would be ironic if a carrier and its affiliate which operates the adjacent cellular system were prohibited from agreeing to a waiver of the Commission's height/power limitations. In short, there seems to be no public interest served by eliminating this provision of the current rules, specifically Section 22.905.

VI. PACTEL URGES THE COMMISSION TO CONFORM ITS REWRITE WITH RECENT DECISIONS ONCE THEY ARE FINAL

PacTel previously suggested that the Commission conform its rewrite of Part 22 to incorporate all of the changes adopted in the Cellular License Renewal (Docket 90-358) and Unserved Area (Docket 90-6) proceedings. Many of the other commenters also commented on the fact that many of the changes adopted in those proceedings were not included in the proposed rewrite. For example, BellSouth submitted an appendix to identify the rules adopted in those two proceedings

⁵ McCaw, p. 38; CTIA, p. 7; Vanguard Cellular System, Inc., p. 4; Telocator, p. 52.

which were omitted from the Part 22 rewrite. PacTel reiterates its suggestion that the Commission provide for limited comment when the Rewrite of Part 22 has been conformed to include the final rule changes of these proceedings.

November 5, 1992

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Betsy L. Peterson, hereby certify that on this 4th day of November, 1992, copies of the foregoing Reply Comments of PacTel Cellular were served by U.S. Mail, first-class postage prepaid upon the following parties:

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